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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,700	12/27/2001	Norifusa Matsuo	Q67809	9275

7590

07/09/2003

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 5/8/03
- ☐ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1, 3-6, 8-10, 15 & 21, 22 is/are pending in the application.
- Of the above, claim(s) 6, 8-10, 15, 21 & 22 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 3-5 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claims 1, 3-6, 8-10, 15 & 21, 22 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☒ received in Application No. (Series Code/Serial Number) 09/403,368
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1616

Receipt is acknowledged of election/amendment and supplemental amendment.

Applicant's election without traverse of Group I, inorganic P species in Paper No. 4 is acknowledged.

Claims 6, 8-10, 15, 21 and 22 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nasu et al U.S. 4995898.

The instant Imidazole (Table 2, compounds 18-22, for example), with inorganic phosphorous (example 7) at the instant claims ratio. The examples are not limited (col.59, top) thus, one would substitute any of compounds between # 16-26, if one desired a phenyl substituted Imidazole.

Claims 1, 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nasu et al WO 0337103 in view of Nasu et al 4995898 and Thizy et al 4075324.

Nasu (WO) provides Imidazoles useful in combination with other biocides (p.3).

The Nasu Imidazole is a cl analog of the instant compound, and of Nasu US. Combination is shown as fungicidally effective with a great number of compounds (p.3, bottom) including inorganic fungicides. Nasu particularly states combination of Imidazole with known fungicides is effective but, combination may be less than additive (p.3, lines 10-21). Nasu (US) provides the WO and similar compounds, inclusive (see Nasu, above) of the instant compositions, with inorganic phosphates, but does not elaborate on the phosphates. Thizy however does disclose the various P compounds inorganic and organic, suitable for fungicidal use on plants (col.1, summary). These include phosphoric, phosphorous, hypophosphorous and salts of these acids (col.2-4). Combination with Imidazoles is also suggested (col.8, lines 32-43).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a mixed organic and inorganic fungicidal composition, to use one of Nasu, with the particular Imidazole of choice based on the pests of concern, with the inorganic phosphorous compounds shown by Thizy to be effective fungicides when mixed with Imidazoles. Motivation to combine is taught by Nasu, WO, in order to enhance efficacy and reduce Imidazole amount required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for

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organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" being more prominent than the last name "Levy".

Levy/tgd
June 24, 2003

NEIL S. LEVY
PRIMARY EXAMINER